

APPEAL NO. 041145
FILED JUNE 29, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 20, 2004. The hearing officer resolved the disputed issue by determining that the appellant's (claimant) impairment rating (IR) is 62%. The claimant appeals this determination and urges that the correct IR is 68%. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

The claimant attached new evidence to his appeal, which was not offered into evidence at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence offered is not so material that it would probably produce a different result. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

Section 408.125(e) provides that for injuries occurring prior to June 17, 2001, where there is a dispute as to the IR, the report of the Texas Workers' Compensation Commission-selected designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor was a factual question for the hearing officer to resolve. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. The hearing officer noted that the amended report of the designated doctor, wherein he assigned a 68% IR, included a rating for a surgical procedure that occurred after the date of statutory maximum medical impairment (MMI). However, as the hearing officer correctly pointed out, an IR must be based on the claimant's condition as of the date of MMI. Texas Workers' Compensation Commission Appeal No. 040313-s, decided April 5, 2004. Nothing in our review of the record indicates that the hearing officer's decision that the claimant's IR is 62% is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier**, and the name and address of its registered agent for service of process is

**MARVIN KELLY
9120 BURNET ROAD
AUSTIN, TEXAS 78752.**

Chris Cowan
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge